a certain class should be provided with fire escapes, but unlike the previous act gave no civil action for a breach. The defendant inherited a tenement not properly equipped, and, in a fire a month later, the plaintiff's wife was killed as a result of the absence of fire escapes. The plaintiff sued for negligence, but was allowed to amend and substitute the non-performance of statutory duty as the basis of his action. *Held*, that he cannot recover on that theory. *Evers* v. *Davis*, 90 Atl. 677 (N. J. Ct. Err. and App.).

In this case the court's opinion closely follows and quotes at length from Dean Thayer's article in a recent issue of the REVIEW. See 27 HARV. L. REV. 317. It states admirably that in the absence of an express statutory provision for civil action, recovery for a breach of the statute depends on common law principles of negligence. But the statute in question prescribed an affirmative duty, and its violation was a nonfeasance, so that evident legislative intention to create a new private duty toward those for whose benefit the statute was passed is essential. *Cowley* v. *Newmarket Local Board*, [1892] A. C. 345. In view of the omission of the former act's provision for civil remedy, it may well be doubted whether the legislature intended to impose any duty on the landlord in favor of the tenant or his family and change the common-law rule of no liability for open defects of the premises to that extent. See *Land* v. *Fitzgerald*, 68 N. J. L. 28. *Cf. Willy* v. *Mulledy*, 78 N. Y. 310. The statute may conceivably be regarded, however, as stamping the maintenance of such tenements without fire escapes as dangerous conduct, so that the landlord would be guilty of positive wrong, and liable for his negligence in disregarding the legislative warning. See *Dawson & Co.* v. *Bingley Urban District Council*, [1911] 2 K. B. 149, 159. The fact that in the principal case the landlord inherited the premises only a month before the fire, suggests another interesting question, on which there is no direct authority. The nearest analogy is the case of a public officer, excused from the performance of a statutory duty because the necessary means were not furnished him. See *Weise* v. *Tate*, 45 Ill. App. 311. It would seem likewise proper to deny recovery against one who has made every reasonable effort to comply with the statute, but has failed because of lack of time. For his conduct has been that of a reasonable prudent man with reference to the statute.

POLICE POWER — INTEREST OF PUBLIC HEALTH — CONSTITUTIONALITY OF EUGENIC MARRIAGE LAWS. — A Wisconsin statute forbids the county clerk to issue a marriage certificate to any male applicant who does not produce a physician's certificate stating the applicant to be free from acquired venereal diseases, and provides that the physician's fee for such examination shall not exceed three dollars. *Held*, that the statute is constitutional. *Peterson* v. *Widule*, 147 N. W. 966 (Wis.).

A discussion of the case in the lower court will be found in 27 HARV. L. REV. 573. Under the upper court's construction of the statute, it does not require a laboratory test as the basis of the certificate, and the law therefore ceased to be objectionable as an unreasonable restriction on the right to marry.

POLICE POWER — NATURE AND EXTENT — FEDERAL PROTECTION OF MIGRATORY BIRDS. — An act of Congress declared that migratory birds were under the protection of the federal government and authorized the Department of Agriculture to make regulations in regard to hunting them. The defendant, indicted for violation of one of these regulations, challenges the constitutionality of the act. *Held*, that the act is unconstitutional. *United States* v. *Shauver*, 214 Fed. 154 (Dist. Ct., E. D., Ark.).

As representative of the people, each state controls fish and game within its borders. *Geer* v. *Connecticut*, 161 U. S. 519; *In re Mattson*, 69 Fed. 535. But when game leaves the state, its sovereignty ceases. See *Behring Sea Ar-*

bitrators' Decision, 32 AM. L. REG. 909. Game that migrates from state to state is thus constantly passing from the sovereignty of one state into that of another. Such a situation could be most effectively regulated by the federal government, but it seems clear that the statute in the principal case is beyond its powers. The federal government does not have sovereignty over the game, neither is there any legal principle authorizing the nation to assume powers because it can exercise them better than the states. Moreover, though the federal power over interstate commerce covers more than mere sales, and might conceivably come to include journeyings of citizens from state to state, the step from that to the uncontrolled movements of wild game is a very long one. It would seem that the worthy purpose of this statute must be carried out in some other way, either by exercise of the taxing power or by constitutional amendment.

POLICE POWER — REGULATION OF TRADES, PROFESSIONS AND BUSINESS — REGULATION OF RATES: FIRE INSURANCE. — A Kansas statute (Session Laws of 1909, c. 152, § 3) authorized the superintendent of insurance to establish reasonable rates for fire insurance companies. *Held*, that it is constitutional. *German Alliance Ins. Co.* v. *Lewis*, 34 Sup. Ct. 612.

For a discussion of the principles involved, see NOTES, p. 84.

PUBLIC SERVICE COMPANIES — REGULATION OF PUBLIC SERVICE COMPANIES — TELEPHONE COMPANIES: COMMISSION'S ORDER COMPELLING PHYSICAL CONNECTIONS. — The plaintiff company, operating long distance telephone lines in various states and maintaining a limited telephone service in a hotel, was ordered by the Oregon railroad commission to make physical connection with a local telephone company which had telephones in each room of the hotel so that both systems might be used interchangeably by the hotel. *Held*, that the order is valid. *Pacific Tel. & Tel. Co.* v. *Wright-Dickinson Hotel Co.*, 214 Fed. 666 (Dist. Ct., Ore.).

This case supports the correct view, that the order is to be sustained as a reasonable regulation of undertakings affected with a public interest, and not held void as an attempted exercise of the power of eminent domain without proper compensation. For a criticism of a contrary case, see 27 HARV. L. REV. 687.

RAILROADS — REGULATION OF RATES — POWER OF INTERSTATE COMMERCE COMMISSION OVER INTRASTATE RATES — "SHREVEPORT RATE CASES." — Railroads running between Shreveport, La., and Houston and Dallas, Tex., maintained higher rates between Shreveport and Texas points than for corresponding distances within Texas. The Interstate Commerce Commission found that this constituted unjust discrimination in favor of intrastate traffic. It then fixed maximum interstate rates, and ordered the carriers to equalize their intrastate and interstate rates. The Railroad Commission of Texas had established intrastate rates lower than the new maximum rates, and the Commerce Court held, on appeal, that the carriers could disregard this intrastate schedule, and increase those rates to correspond with the order. The carriers then attacked the validity of the order in the Supreme Court. *Held*, that the order be sustained. *Houston, E. & W. T. Ry. Co.* v. *United States*, 234 U. S. 342.

The court upholds the order as within the power of the Interstate Commerce Commission to regulate the relation between interstate and intrastate rates so as to prevent unjust discrimination against interstate commerce. For a discussion of the questions involved, see an article on page 34 of this issue of the REVIEW. Similar questions were discussed in the comment and leading article on the Minnesota Rate Cases. See 24 HARV. L. REV. 679; 27 *id.* 14.